IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 28865 of 2006(J)

PETITIONER:

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1. ST.GEORGE ORTHODOX SYRIAN CHURCH, KATHIPPARATHDADAM, CHELACHUVADU P.O., IDUKKI, PIN-685 606, REPRESENTED BY ITS TRUSTEE @ S/O. SKARIA, AGED 48, RESIDING AT CHIRAKKACHALIL HOUSE, KEERITHODU, IDUKKI.

2. FR. K.K.VARGHESE, VICAR, ST.GEORGE ORTHODOX SYRIAN CHURCH, KATHIPPARATHDADAM, CHELACHUVADU P.O., IDUKKI, PIN-685 606.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY (REVENUE DEPT.), GOVT. SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT COLLECTOR, PYNAVU, IDUKKI.

3. P.K.GOPINATHAN, ADDITIONAL DISTRICT MAGISTRATE, PYNAVU, IDUKKI.

4. P.E.VIJAYAKUMAR, REVENUE DIVISIONAL OFFICER, PYNAVU, IDUKKI.

5. THE SUB DIVISIONAL MAGISTRATE, PYNAVU, IDUKKI.

ADDL.R6. KURIAN KURIAN, S/O. KURIAN, KALLUVETTAMKUZIYIL, KEERITHODE P.O., IDUKKI DISTRICT
(IMPLEADED AS ADDL. R6 AS PER ORDER DATED 10-11-2006 IN I.A. 15700/06)

ADDL. R7: REJI JOHN POTTANKULANGARAYL CHURULI, CHELACHUVADU P.O., IDUKKU DISTRICT

ADDL. R8: MATHEW ULAHANNAN, VETTUCHIRAYIL HOUSE, -DO-

ADDL. R9: KURIAKOSE EDAPPATTU, S/O.PAULOSE, KEERITHODU P.O., IDUKKI DISTRICT

ADDL. R10: ELDHOSE ULAHANNAN, VETTUCHIRAYIL HOUSE, CHELACHUVADU P.O., IDUKKI DISTRICT

ADDL. R11: POULOSE NEDUNGATTUKUDIYIL, S/O.KURIAN, PAZHAYARIKANDAM P.O., IDUKKI DISTRICT

ADDL. R12: VARGHESE KANJIRAKKATT, S/O.KURIAN, CHELACHUVADU P.O., IDUKKI DISTRICT

ADDL. R13: ELIAS MUNDAPLACKAL, S/O. KURIAKOSE, -DO-

ADDL.R14: JOY THOTTIYIL, S/O.VARGHESE, PAZHAYARIKANDAM POST, IDUKKI DISTRICT

ADDL. RESPONDENTS 7 TO 14 ARE IMPLEADED AS PER ORDER DATED 17-11-2006 IN IA. 15892/06.

BY ADV. SRI.SAJAN VARGHEESE. K.
SRI.LIJU. M.P
GOVT.PLEADER SRI. K.S. SIVAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/12/2006, ALONG WITH WPC NO. 32114 OF 2006 THE COURT ON 28/02/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS:

EXT.P1: TRUE COPY OF KALPANA NO. 17 OF 2005 DATED 18-6-2005

EXT.P2: TRUE COPY OF THE PLAINT IN O.S. NO. 126/06 OF SUB COURT, KATTAPPANA

EXT.P3: TRUE COPY OF ORDER DATED 30-8-2006 IN I.A. NO. 1190/06 IN O.S . NO. 126 OF 2006 OF SUB COURT, KATTAPPANA

EXT.P4: TRUE COPY OF ORDER DATED 6-7-2006 ISSUED BY SUB DIVISIONAL MAGISTRATE IDUKKI

EXT.P5: TRUE COPY OF COMPLAINT DATED NIL SUBMITTED BEFORE THE 4TH RESPONDENTS

EXT.P6: TRUE COPY OF ORDER DATED 20-7-2006 IN C.M.P. 28/06 BY THE SUB DIVISIONAL MAGISTRATE IDUKKI

EXT.P7: TRUE COPY OF OBJECTION FILED BY THE 2ND PETITIONER IN CMP.NO. 28/2006 BEFORE THE SUB DIVISIONAL MAGISTRATE, IDUKKI

EXT.P8: TRUE COPY OF MINUTES OF THE MEETING HELD ON 16-8-2006.

EXT.P9: TRUE COPY OF INVENTORY OF THE MOVABLES IN THE CHURCH AND PARSONAGE PREPARED ON 9-9-2006.

RESPSONDENT 3 EXTS:

R3 (A): TRUE COPY OF ORDER DATED 8-9-2006 OF THE SUB DIVISIONAL MAGISTRATE, IDUKKI.

R6(F): TRUE COPY OF THE CERTIFICATE OF POSTING

R6G: TRUE COPY OF THE KALPANA DATED 27-01-1990

'CR'

V. RAMKUMAR, J.
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W.P. (c) Nos. 28865 of 2006
&
W.P.(c) 32114/06
* * * * * * * * * * * * * * * * * * *
Dated, this the 28th day of February 2007

JUDGMENT

W.P.(C) 28865/06 has been filed by the Orthodox faction seeking a writ of mandamus directing respondents 3 and 4 namely the Addl. district Magistrate, Painavu, Idukki and the R.D.O. Painavu, Idukki for return of the key of the first petitioner-Church and Parsonage to the vicar Fr. K.K. Varghese (2nd petitioner therein).

2. The prayer in W.P.(C) 32114/06 filed by the patriarch faction is for a writ of mandamus directing the State of Kerala, District Collector, Idukki, Addl. District Magistrate, Idukki, Revenue Divisional Officer, Idukki and Sub divisional Magistrate, Idukki to handover the key of the above church and allied establishments including the Parsonage to the petitioners therein forthwith.

3. I heard Adv. Sri.S. Sreekumar, the learned counsel appearing for the Orthodox faction and Adv. Sri.Sajan Varghese, the learned counsel appearing for the Patriarch faction.

THE ORTHODOX STAND

4. The case of Orthodox faction in W.P.(C) 28865/06 can be summarised as follows:-

2nd petitioner (Fr. K.K. Varghese) was appointed as the vicar of the Church on 18-6-05 by diocesan Metropolitan as per Ext.P1 order dated 18-6-2005. One Manoj belonging to the Patriarch faction and who is a deacon started obstructing the 2nd petitioner vicar from discharging his religious functions in the Church. Thereupon the Church represented by its trustee and another trustee filed a suit before the Sub court, Kattappana as O.S. 126/06 for a perpetual injunction restraining the said Manoj belonging to the Patriarch faction from disturbing the religious services of the church or from obstructing the duly appointed vicar from conducting the religious services in the church or from obstructing him from residing in the Parsonage building situated in the church property. Ext.P2 is the plaint in that suit. As per Ext.p2 order dated 30-8-2006 the Sub court granted an interim order of injunction as prayed for. Thereafter the said Manoj contended

before the Sub court that there could not be any blanket ban against him as he was also a parishioners of the church. Therefore, the sub Court as per order dated 7-9-2006 modified Ext.P3 order as follows:-

> *"Heard. Defendants' counsel apprehends that the petitioner may obstruct the respondent from participating in the services of the church. It is made clear that injunction order is not to obstruct the respondent in having his services. Since there is already a vicar appointed in the church the respondent can attend the services under the guidance of the vicar who is performing services".*

Thus, Manoj was permitted to attend the services in the church under the guidance of the 2nd petitioner Fr. K.K.Varghese the Vicar. When the Vicar and the diocesan Metropolitan took steps to lay the foundation stone for a construction of a new church. Ext.P5 complaint was filed by some of the parishioners belonging to the Patriarch faction before the 5th respondent Sub divisional Magistrate, Idukki. On 6-7-2006 the 5th respondent Sub Divisional Magistrate passed Ext.P4 order under Sec. 145 Cr.P.C. restraining the construction activities in the church. The counter petitioners to the said proceedings are the 2nd petitioner Fr. K.K. Varghese

and four others. Fr. K.K. Varghese is described as the Vicar of the Church. Thereafter on 30-7-2006 the 5th respondent Sub Divisional Magistrate passed Ext.P6 order purportedly under Sec. 145 Cr.P.C. restraining the 2nd petitioner and others conducting the Sunday School and other activities except the religious functions of the church. Thereupon the Orthodox faction filed Ext.P7 petitioner before the 5th respondent Sub divisional Magistrate. The 5th respondent called both factions for a conciliation. Ext.P8 dated 16-8-2006 is the conciliation proceedings in which Sl. No. 3 is Manoj Varghese and Sl. No. 18 is 2nd petitioner K.K. Varghese described as the Vicar of the Church. A perusal of Ext.P8 will show that the only dispute raised by the Patriarch faction was regarding the name of the Church. There was no dispute regarding the fact that the 2nd petitioner Fr. K.K. Varghese was the Vicar of the Church. However, what followed was that on 9-9-2006 the Special Village Officer locked the church and the Parsonage and prepared Ext.P9 inventory of the movables. Ext.P9 inventory refers to an order dated 9/9/2006 said to have passed by the 4th respondent R.D.O. Ext.R3 (a) dated 8-9-2006 is stated to be order passed by

the 5th respondent Sub Divisional Magistrate prohibiting anybody from entering into or residing in the patronage except for prayers up to 12 noon on Saturdays and Sundays and in the event of any special prayer on other days directing that the matter should be brought to the notice of the Sub Divisional Magistrate for seeking sanction. The said order was to be in force for a period of 60 days from 8-9-2006. This order is purportedly passed not at the behest of any member of the Patriarch faction but on the basis of a report dated 6-9-2006 of the Circle Inspector of Police, Kanhikuzhi. The second petitioner was thus dispossessed both from the church and Parsonage by the 5th respondent Sub Divisional Magistrate for a period of 60 days. The Vicar who is an appointee of the Metropolitan and who holds office during the pleasure of the Metropolitan could not have been ousted in this fashion. Ext.P8 conciliation proceedings does not show that the patriarch faction had put forward any claim regarding the religious services in church. Their only grievance was regarding the name of the church. Likewise, they have no dispute regarding the user of the Parsonage by the 2nd petitioner Vicar. By locking up the Church

and its structures including the Parsonage and thereby dispossessing the 2nd petitioner who is admittedly the Vicar, respondents 4 and 5 were acting malafide and in colourable exercise of their power. They were acting in accordance with their power under Sec. 145 Cr.P. C. or in other law. They had misused their official position by locking up the Church Parsonage etc. on 9-9-2006. On 21-10-2006 the Addl. District Magistrate and Revenue Divisional Officer (R3 and R4) came to the Church with a band of police men chased away the 2nd petitioner Vicar and other parishioners, opened the Church and permitted the Patriarch group to conduct the holy mass. They waited outside the Church for about 3rd respondents till the holly mass was over and after that locked the Church and left the place with the keys. Hence this Writ Petition.

THE PATRIARCH STAND

5. The case of the Patriarch Group, on the other hand, can be summarised as follows:-

This is not a Church governed by the 1934 constitution which was upheld by the Supreme Court in **P.M.A. Metropolitan's**

case - AIR 1995 SC 2001 and the said Constitution is not binding on this Church. The rift in the churches in India had already started from the year 1971 onwards. St.George Jacobite Syrian Christian Church was established and consecrated in the year 1977 by the Jacobite community of that locality. Therefore, the catholicos faction had nothing to do with the establishment or consecration of the Church. The Church has been under the constant supervision and spiritual administration of the dignitaries and spiritual authorities of the Patriarch faction only. The said church was never a constituent of Malankara Orthodox Syrian Church. As such the 1934 constitution of the said church was never made applicable to the said Church. The patta in respect of land of which the church is situated was issued in the name of the then Catholicos of the patriarch faction as evidenced by Ext.P1 tax receipt produced in W.P.C. 32114/06. The said church is a constituent of the Kandanad diocese. Earlier the then catholicos was the diocesan Bishop and later Fr. Thomas Puttanil was consecrated as a Bishop to assist him with the name Thomas Mar Athanasious. Eventually, the said Assistant Bishop went over to

the opposite faction finally as per Kalpana dated 25-11-2000 it was declared by the Patriarch that the said Bishop had severed all his relations with the patriarch faction and that those priests and the faithful who were associating with the said Bishop would be heretics of the church. Ext.P 2 in W.P.C. 32114/06 is the copy of the said Kalpana. Thus, after Ext.P2 the said Bishop had automatically ceased to have any relationship with St. George Jacobite Cyrian Christian Church at Kathiparathadom. Fr. Saji Mathew Arambanakandiyil was the vicar of the above church for the last several years. On account of physical ailments the said priest was not in a position to perform religious services in the church. Fr. K.K. Varghese Karimbanakkal thus came as a substitute to perform the religious duties as an interim arrangement. But the said priest had given rise to innumerable complaints from the parishioners and others resulting in the removal of the said Priest and the appointment of Fr. Sibi (Daniel) Edapulavan. Pursuant to the said appointment Fr. Sibi Daniel Idapulavan began to officiate the functions of the vicar. Later he was substituted by Fr. Yohannan who is at present the Vicar of the

Church. Fr. K.K.Varghese began to create problems including the raising of slogans against Catholicos (Orthodox faction) . Consequently Ext.P5 complaint (in W.P.C. 32114/06) was submitted to the District Collector, Idukki by 206 signatories who are members of the 124 parish families. On 9-9-2006 an inventory of the articles kept in the room attached to the church was taken and the key of the room was also taken by the officials. The key was taken from the custody of the petitioners in W.P.(c) 32114/06 as the petitioners constituted the majority of the managing committee and they were in the administration of the church and its affairs. On 15-10-2006 when the parishioners were performing the religious services with Fr. Yohannan as the Priest and were performing the wholly mass the Revenue Divisional Officer, Idukki came to the church and took away the keys from the petitioners in W.P.(C) 32114/06. The Church is a public trust whose administration is vested in the general body of the parishioners who conduct the administration of the Church through the managing committee. The vicar or the priest does not have any special right in the administration and temporal affairs of the

church. The vicar is not in exclusive possession of any of the articles relating to the Church. The Church does not have a parsonage. A few rooms of the church are used as office of the church and another room is used for taking rest by the priest on those days on which religious services are rendered. In the convenience of the priest he may be holding one key of such room. But the original of the key is with the managing committee and the committee is in possession of the room. The vicar have no special or exclusive claim with regard to any room attached to the church. Fr.K.K.Varghese is an intruder of the affairs of the Church. He is not a parishioner and does not have any vested right over the church. The petitioners in W.P.C. 32114/06 later came to know that it was even without passing orders that the Revenue Divisional Officer had taken the keys. The taking away of the keys from the petitioners in W.P.C. 32114/06 amounts to violation of the fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India. The said Act is an invasion of the fundamental rights of the parishioners to profess, practice and administer the church and its affairs. No notice was

served on the patriarch group with regard to the locking of the room. So also no orders had been passed in that behalf. If any order have been passed invoking Sec. 144 Cr.P.C., the said order had ceased to exist by the force of Section 144 (4) Cr.P.C. since no notification has been issued by the government for extending the order passed under Section 144 (1) and (3) Cr.P.C. In the meanwhile Ext.P6 suit namely O.S. 126/2006 on the file of the Sub Court, Kattappana, seeking reliefs regarding the conduct of religious services in the church was filed. Ext.P7 is the interlocutory application filed in the said suit. There is no parishioner for the church. In any view of the matter the keys taken away by the officials have to be returned to the petitioners in W.P.(C) 32114/06. After the appointment of Fr. Yohannan as per Ext.P4 in W.P.C. 32114/06 dated 28-9-2006 Fr. K.K. Varghese has not performed the holy mass in the Church as he was not legally entitled to do so. If the keys are to be given back, that is to be to the petitioners in W.P.C. 32114/06 and not to the Orthodox faction.

JUDICIAL EVALUATION

6. This is yet another forensic battle for religious and spiritual supremacy over the church by the two rival groups of the Jacobite Christian Community -- one owing allegiance to the Patriarch of Antioch called the Patriarch faction and other owing allegiance to the catholicos called the Orthodox faction. The Church which is the subject matter of the present proceedings is the St. George Syrian Church at Kathiparathadam, Chelachuvadu, Idukki. While the Patriarch faction would call it the St. George Jacobite Syrian Christian Church, the Orthodox faction would call it the St. George Orthodox Syrian Church. St.George Orthodox Syrian Church, Kathipparathadom, Chelachuvadu, Idukki figures as Sl.No. 346 Ext.P4 in an earlier writ petition filed before this Court as O.P. No.22946/02 which was finally disposed of by a Division Bench along with other connected matters in **Moran Mar Baselious Marthoma Mathew II v. State of Kerala - 2003 (1) KLT 780.** The said church was described as an orthodox church governed by the 1934 Constitution. **In P.M.A. metropolitan and others v. Moran Mar Marthoma and**

Another - AIR 1995 SC 2001 it is observed as follows in paragraphs 54 of the judgment of R.M. Sahai - J. :

> *"It has already been indicated that in consequence of Ext. A-14 the Kalpana issued by Abdul Messiach the entire power, spiritual or temporal, which was exercised by the Patriarch of Antioch was conferred on the Catholico of the East. The only relation which ewas to be observed in future was the communion of the two. In fact if the history is traced from the Mulunthuruthy Synod held in 1876 to 1912 then it is apparent that Catholicate of the East was not treated as subordinate to the Patriarch of Antioch. he exercised same spiritual and temporal powers as patriarch but with respectful communion".*

7. Again in paragraph 76 of the aforesaid decision, the learned Judge inter alia concluded as follows:

> *"4 (a) The effect of the two judgments rendered by the Appellate Court of the Royal Court and in Moran Mar Basselios (supra) by this Court is that both Catholicos and Patriarch Group continue to be members of the Syrian Orthodox Church.*
>
> *b) The Patriarch of antioch has no temporal powers over the churches.*
>
> *(c) Effect of the creation of Catholicate at Malankara and 1934 Constitution is that the Patriarch can exercise spiritual powers subject to the Constitution.*
>
> *(d) The spiritual powers of the Patriarch of Antioch can be exercised by the Catholico in*

accordance with the Constitution.

5 (a) The Hudaya Canon produced by the Patriarch is not the authentic version.

b) There is no power in the Hudaya Canon to excommunicate Catholicos.

6) The excommunication of the Catholicos by the Patriarch was invalid.

7. All churches, except those which are of Evangelistic Association or Simhasana or St. Mary are under spiritual and temporal control of the Malankara Association in accordance with 1934 Constitution".

(emphasis supplied)

The learned judge accordingly confirmed the conclusions of the Division Bench of this Court in A.S. Nos. 331 and 358 of 1980 and 362/90.

8. In the majority judgment by B.P. Jeevan Reddy (J) for himself and on behalf of S.C. Sen (J) it was inter alia concluded as follows in paragraph 142:

" 2. The Catholicate was revived and re-established by Patriarch Abdul Messiah in the year 1912. The powers and functions of the Catholicos are set out in Ext.A 14. Moreover by virtue of their acts

and conduct subsequent to the judgment of this Court in AIR 1959 SC 31, the defendants in the present suit (i.e. the members of the Patriacrch group) cannot now dispute the validity of the revival of the Catholicate or of Ext.A.14.

3) It may be that by conferring upon the Catholicos the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, the Patriarch may not have denuded himself completely of the said powers which he enjoyed until then . But in view of the fact that he had himself created another centre of power in India with the aforesaid powers, it would be reasonable to hold that thereafter the Patriarch cannot exercise those powers unilaterally i.e. without reference to the Catholicos. He can exercise those powers only in consultation with the Catholicos. Moreover, the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the judgment in Seminary suit. The Patriarch's power to ordain the Metroplitans now is subject to the Constitution of 1934.

4) It may be that by virtue of the revival of Catholicate and by issuing the Kalpana Ex. A. 14- and also by accepting the 1934 Constitution (as to be mentioned presently)- the power of the patriarch may have been reduced to a vanishing point, but all the same he remains the supreme head of the Syrian church of which the Malankara Church is a division. He is spiritually superior to the Catholicos though he does not, and indeed never did, enjoy any temporal powers over the Malankara Church or its properties.

5) The 1934 Constitution was approved at a

validly convened meeting of Malankara Association, which Association was created by the patriarch himself under the Resolutions of Mulanthuruthy Synod. The defendants in the present suits (Patriarch group) cannot question its legality and validity in view of the acts and conduct of the Patriarch and the members of his group subsequent to the judgment of this Court in AIR 1959 EC 31

6) Ext.A19, Kalpana, was issued by Patriarch Yakub with the full knowledge of revival of Catholicate. Ext.A.14 and the 1934 Constitution and the various claims and contentions of both the parties put forward in Samudayam suit and the decision of this Court in AIR 1959 SC 31. It must, therefore, be held that the Patriarch has thereby accepted the validity of the revival of Catholicate Ex.A.14 and the 1934 Constitution, and abandoned and gave up all or any objections they had in that behalf. Several members of his group including some of the defendants also accepted the Constitution and took oath to abide by it. They cannot now turn round and question the same.

7) Though the Patriarch raised objections to the honorifics (e.g. use of "holiness" with the name of the Catholicos and his assertion that he was seated "on the Throne of St. Thomas in the East") and to the qualification added by the Catholicos in his Kalpana Ext.A.20 (i.e. accepting the Patriarch subject to the Constitution), the Patriarch must be deemed to have given up and abandoned all those objections when he came to India, pursuant to a canonical invitation from the Malankara Synod and installed and consecrated the new Catholicos on May 22, 1964. It is also worth noticing that a day before such installation/consecration, the Patriarch took care to have the territorial jurisdiction of Catholicate duly

defined and de-limited by excluding certain areas in the Middle East from the jurisdiction of the Catholicos.

8) So far as the declaration of the Malankara Church being Episcopal in character is concerned, all we need hold is that it is episcopal to the extent it is so declared in the 1934 Constituion. The said Constitution also governs the affairs of the Parish Churches and shall prevail".

9) The excommunication of Catholicos by the patriarch and/or by the Universal Synod is invalid for the reason that the grounds/charges on which the excommunication has been effected are not permissible or relevant grounds. The denial of Patriarch's spiritual authority by the Catholicos and his group and similarly the Patriarch's refusal to recognise the Catholicos or the 1934 Constitution in the correspondence that passed during the years 1972 to 1975 are attributable to the personal differences and the mutual bickering between the two dignitaries and their respective groups. On that basis, it can neither be said that the Catholicos or his followers have become apostates or that they have deviated from the tenets of the faith. Similarly, Patriarch cannot be said to have lost his spiritual supremacy over the Malankara Church (on account of his accusations and declarations) which he enjoyed prior to the commencement of the said correspondence, i.e. according to the 1934 Constitution).

xxx xxx xxx

> *144. The situation resulting from the above summary of the findings is that the situation obtaining on January 1, 1971 (i.e. the day after the election of Mathew Athanasius at the meeting of the Malankara Association held on December 31, 1970, in accordance with the 1934 Constitution) shall be deemed to be the position even today in all respects.*

(emphasis supplied)

9. Thus, the majority judges also concurred with the view of Sahai - J, that that a church under the Malankara Association is episcopal in character and that the Patriarch group cannot question the legality and validity of the 1934 constitution.

10. Paragraph 64 of the above decision of the Apex court in P.M.A. Metropolitan's case shows that that litigation between the patriarch group and Catholicos group arose out of a representative suit instituted under Order 1 R. 8 C.P.C. The findings in such a suit would definitely bind persons similarly situate. The fact that 1000 Parish churches unsuccessfully sought their impleadment in that suit will not make the position different. Even if those churches did not file impleading petitions, they would nevertheless be bound by the decision in the representative action. This is what Sahai, J. has observed in para

64 of the judgment:

> *"It is too late, therefore, to urge that no declaration on the status of Parish Churches be granted. No such objection was taken either before the learned Single Judge or the Division Bench. May be that the 1000 Parish Churches were not impleaded. But it was a representative suit. Then the suit was for a declaration that the Malankara Church was episcopal in character and not a Union of Federation of autonomous Churches. It was not necessary to implead every Parish Church as a party. The question whether Malankara Church was episcopal or not had to be decided on the pleading of the plaintiff. The defence raised by the defendants, who were ordained by the Patriarch of Antioch, was that they were the metropolitans and, therefore, entitled to protect the interest of Parish Churches. Moreover the declaration sought is as to matter of law. No factual dispute arises. The suit was filed for enforcement of this right. Once it was found by this Court in 1958 that the Constitution was validly framed the Catholicos could not be denied this declaration. In paragraph 94 of the 1934 constitution it was provided that, 'the (The) Prime jurisdiction regarding the temporal ecclesiastical and spiritual administration of the Malankara Church is vested in the Malankara Metropolitan subject to the provisions of this constitution'. Whether a particular Parish Church is a member of the Malankara Association is not relevant. Therefore, the submission that the non-impleadment of individual Parishes precluded the court from granting any declaration about the nature and status of Parish Churches, does not appear to be correct".*
>
> (emphasis supplied)

11. No doubt, in paragraph 141 of the judgment of B.P. Jeevan Reddy speaking for the Two Judges' majority, it is

observed that a declaration regarding control over temporal affairs of or title to or control over the properties of the parish churches could be obtained only after hearing the parish churches and in the presence of the concerned parish churches each of which has its own constitution. But the above observation runs counter to the conclusions of the two judges' majority in paragraph 142 sub-para 8 wherein it is held that the 1934 Constitution also governs the affairs of the parish Churches and shall prevail. When the fact remains that the Parish Churches have suffered the dismissal of their impleading petitions in the above representative suit, the mere circumstance that the decision in that suit was rendered without the Patriarch churches on the party array will not prevent the decision from operating against them and binding them as well. The provisions contained in Order 1 Rule 8 C.P.C. constitute an exception to the general rule that all persons interested in a suit or proceeding should be joined as parties to such suit or proceeding because, without their junction the points arising in such suit or proceeding cannot be finally adjudicated upon. The object for which this provision has

been enacted is to facilitate a decision, without recourse to the ordinary procedure, on questions in which a large number of persons are interested. The provision must, therefore, receive an interpretation which will subserve its object. ***(Vide - The Chairman, Tamilnadu Housing Board, Madras v. T.N. Ganapathy - 1990 (1) SCC 608).*** Admittedly the litigation in P.M.A. Metropolitan's case was between the very same warring factions and the Apex Court held in no unmistakable terms that the Patriarch of Antioch having accepted the validity of the revival of the Catholicos, members of the Patriarch group were not entitled to question the authority of the Catholicos or the 1934 Constitution. Thus the petitioners in W.P.C. 32114/06 who represent the Patriarch faction cannot claim that the church which is a member of the Malankara association is not liable to be governed by the 1934 Constitution or that the Patriarch of Antioch continues to have supremacy over the church in preference to the Catholicos. It is also admitted by both sides that a similar view taken by this Court in respect of another Malankara Church, namely, the St. Johns Jacobite Syrian Church, Kanniyattunirappu in

W.P.(c) 3497/05 and R.P. 956/05 in W.P.(C) 3497/05 was refused to be interfered with by the Apex Court which dismissed the SLPs preferred against the Judgment of this Court. After the decision of the Supreme Court in **P.M.A. Metropolitan's** case rendered in a representative action, no court can allow the very same issues to be re-agitated. There has to be a quietus in this matter. Even after the authoritative pronouncement of the Apex Court in **P.M.A. Metropolitan's** case, the State of Kerala has been witnessing very ugly scenes of violence and unrest on the assumed belief (presumably spread by certain vested interests) that the aforesaid issues are still at large notwithstanding the verdict by the highest Court of the nation. Just as political issues should find solution from the political leaders, religious issues should primarily get settled at the intervention of religious leaders. But, once the issues have been dragged to the Court whose jurisdiction under Sec. 9 C.P.C. is all pervading, there ought to be a finality. This is particularly so when the litigation before the civil court which culminated in **P.M.A. Metropolitan's** Case, was a representative action.

THE MERITS OF THE 145 PROCEEDINGS

12. Now coming to the merits of the case, even though the Patriarch group would allege that Fr. K.K.Varghese of the Orthodox faction is not the vicar of the Church, in all the petitions preferred by the Patriarch group before the Sub Divisional Magistrate in proceedings under Sec. 145 Cr.P.C., Fr. K.K.Varghese is described as the vicar of the Church. Pursuant to Ext.P7 objection by the Catholicos group to Ext.P4 preliminary order passed by the Sub Divisional Magistrate under Sec. 145 Cr.P.C. the Revenue Divisional Officer (5th respondent in W.P. (c) 28865/06) had called for a conciliation of both the warring factions. Ext.P8 is the proceedings in the conciliation which shows that there was no dispute regarding the fact that Fr. Varghese was the Vicar or regarding the right of the Vicar to use the Parsonage of the Church. The only dispute was regarding the name of the Church, which in the light of the aforementioned discussion cannot be acceded to. Ext.R3(a) is the order said to have been passed by the 5th respondent on 8-9-2006 prohibiting anybody including the

vicar from entering the parsonage for 60 days except on Saturdays and Sundays for the reason that the Patriarch faction objected to Fr. K.K.Varghese and his family residing in the parsonage. It refers to a report dated 6-9-2006 of the Circle Inspector of Police, Kanzhikuzhy who was evidently taking a partisan attitude. When in Ext.P8 conciliation proceedings, there was no such objection or dispute from the Patriarch faction, the 5th respondent was palpably taking sides when he passed Ext.R3 (a) order. Pursuant to the said order the Special Village Officer came and locked the Church and the Parsonage on 9-2-2006 and prepared Ext.P9 inventory. The effect of the proceedings by the 5th respondent is that the Catholicos faction was physically kept out of their possession and control over the church which was indirectly thrown open to the Patriarch group which is openly questioning the 1934 Constitution and the supremacy of the Catholicos. Ext. R3 (a) order is vitiated by malafides besides being contrary to the law and illegal . The fact that Ext.R3 (a) order was passed by the Sub Divisional Magistrate without hearing the persons concerned is admitted even by the Patriarch group in W.P.

(c) 32114/06 wherein even violation of the fundamental rights is alleged. Ext.R3 (a) order is accordingly set aside. The proceedings under Sec. 145 Cr.P.C. initiated in respect of Church is nothing but an abuse of the process of court. Fr.K.K. Varghese, the second petitioner in W.P.C. 28865 /06 who is the vicar of the Church will be entitled to conduct services in the Church in his capacity as the Vicar and subject to the 1934 Constitution. He will be entitled to the custody of the keys of the Church and the Parsonage. The 5th respondent shall direct the person in possession of the keys to handover the same to Fr. K.K.Varghese within 10 days from this date failing which Fr. K.K. Varghese shall be entitled to assume possession of the Church and the Parsonage in the presence of two respectable witnesses including the Special Village Officer, Kanhikuzhi. Members of the Patriarch faction will be entitled to offer prayers and attend services only if they file a written undertaking before the Vicar that they will not question the 1934 Constitution or the authority of the Catholicos to administer the Church in accordance with the provisions of the 1934 Constitution. W.P. (C) 28865/06 will accordingly stand allowed

and W.P.(C) No. 32114/06 will stand dismissed.

Parties shall bear their respective costs in these Writ Petitions.

V. RAMKUMAR,
(JUDGE)

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V. RAMKUMAR, J.

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W.P. (c) Nos. 28865 of 2006

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W.P.(c) 32114/06

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Dated, this the
28th day of February 2007